

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PETITION
TO APPOINT MEMBERS TO
THE UTILITY OPERATORS
CERTIFICATION ADVISORY
BOARD,**

WQCC No. 21-47

**New Mexico Environment
Department, Drinking Water
Bureau,**

Petitioner.

**ORDER APPOINTING MEMBERS TO UTILITY OPERATORS
CERTIFICATION ADVISORY BOARD**

THIS MATTER having come before the Water Quality Control Commission (“Commission”) during its regularly scheduled meeting on November 9, 2021, on the Petition to Appoint Members to the Utility Operators Certification Advisory Board (“Petition”) filed on September 8, 2021 by the Drinking Water Bureau (“Bureau”) of the Water Protection Division (“Division”) of the New Mexico Environment Department (“Department”), requesting that the Commission appoint two regular members and one alternate member to three-year terms on the Utility Operators Certification Advisory Board (“Board”); the Commission having heard from Annie Maxfield, legal counsel for the Department, from representatives of the Bureau, and from the nominees for appointment to the Board; and the Commission thereafter having duly considered the Petition, **FINDS:**

1. NMSA 1978, § 61-33-4(C) (2005) in relevant part reads: “The [C]ommission shall: appoint a seven-member board from certified operators to function with the [C]ommission to establish qualifications of operators, classify public water supply systems and public wastewater

facilities, adopt rules and advise the [Department] on the administration of the Utility Operators Certification Act ...”

2. § 61-33-4(C) does not contain language creating the Board or specifying its authority. Further, no such authority or power is contained in any of the provisions of the Utility Operators Certification Act, NMSA 1978, §§ 61-33-1 to -10 (1973, as amended through 2005). Agencies are created by statute and limited to the power and authority expressly granted or necessarily implied by those statutes. *See, e.g., Qwest Corp. v. NMPRC*, 2006-NMSC-042, ¶ 20, 143 P.3d 478, 484, as revised (Sept. 25, 2006); *Public Service Co. of New Mexico v. New Mexico Environmental. Imp. Bd.*, 1976-NMCA-039, ¶ 7, 549 P.2d 638, 641 (“Administrative bodies are the creatures of statutes. As such they have no common law or inherent powers and can act only as to those matters which are within the scope of the authority delegated to them.”).

3. The Bureau, on page 2 of its Petition, under the heading “Background,” acknowledged that “[the procedure whereby the Board has nominated and approved certified board operators for appointment by the Commission] has never been memorialized in statute, regulation, or written agreement.”

4. The Bureau’s legal counsel has acknowledged in open Commission meeting that § 61-33-4(C) does not contain language creating the Board or specifying its authority, and further, that no such power or authority exists in any of the provisions of the Utility Operators Certification Act.

5. Under a plain reading of § 61-33-4(C), the Commission itself is authorized to appoint “certified operators,” as the term is defined in the singular in NMSA 1978, § 61-33-2(A) (2005) and 20.7.4.7(C) NMAC, to serve as regular or alternate members of the Board.

6. Each individual whose name was submitted by the Bureau to the Commission to serve

on the Board is a “certified operator” within the statutory and regulatory meaning of the term.

7. No member of the public in attendance at the Commission meeting voiced any objections to the certified operators named by the Bureau to serve on the Board, after those members of the public were given an opportunity to do so by the Commission.

IT IS THEREFORE ORDERED:

A. Robert Towle and Maria Gilvarry are appointed to the two vacant regular positions on the Board, and Filiberto Aguirre is appointed as an alternate member to the Board, in accordance with § 61-33-4(C) and 20.7.4.29 NMAC, to function with the Commission as prescribed by applicable statute and regulation.

B. The appointment of the certified operators named in Paragraph A above shall be for individual terms that expire on June 30, 2024, in accordance with 20.7.4.29(D) NMAC.

DATED this 17th day of December, 2021.

Stephanie Stringer, Chair
Water Quality Control Commission